

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK - BROOKLYN DIVISION

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Case No. 1-23-42457-ess

In Re:

ROSEMARIE LOPA,

Chapter 11

Debtors.

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**OBJECTION TO DEBTOR’S MOTION TO RECLASSIFY CLAIM NO. 14 AND AVOID  
LIEN AGAINST REAL PROPERTY**

DEUTSCHE BANK NATIONAL TRUST COMPANY AS TRUSTEE FOR INDYMAC INDX MORTGAGE LOAN TRUST 2006-AR2, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2006-AR2 (“Creditor”), through its loan servicer, PHH Mortgage Corporation (“PHH”), hereby filed this *Objection to Debtor’s Motion to Reclassify Claim No. 14 and Avoid Lien Against Real Property* (“Objection”), with respect to certain real property of the Debtor having an address of 454 Edinboro Road, Staten Island, NY 10306 (the “Property”). In further support of this Objection, the undersigned respectfully states the following under penalty of perjury:

**I. STATEMENT OF FACTS**

**A. THE SUBJECT LOAN**

1. Frank Lopa (“Borrower”) has executed and delivered or is otherwise obligated with respect to that certain Adjustable Rate Note in the original principal amount of \$650,000.00 (the “Note”).

2. Pursuant to that certain Mortgage (the “Mortgage”), all obligations (collectively, the “Obligations”) of the Borrower under and with respect to the Note and Mortgage are secured by the Property. (*See* Claim No. 14-2).

3. All rights and remedies under the Mortgage have been assigned to the Creditor pursuant to that certain assignment of Mortgage. (*See* Claim No. 14-2).

## B. PROCEDURAL HISTORY

4. On July 12, 2023, the Debtor, Rosemarie Lopa (the “Debtor”) filed a voluntary petition under Chapter 11 of the Bankruptcy Code and was assigned case number 1-23-42457-ess (the “Bankruptcy Case”). (See Dkt No. 1).

5. Debtor valued the Property at \$1,106,100.00 on her sworn Bankruptcy Schedule D. (See Dkt No. 1).

6. On December 21, 2023, Creditor filed an *Amended Proof of Claim* (“Claim”) listing a secured claim of \$1,370,203.52, including pre-petition arrears of \$861,519.48. (See Claim No. 14-2).

7. On May 29, 2024, Debtor filed a *Motion to Reclassify Claim No. 14 and Avoid Lien Against Real Property* (“Motion to Value”) seeking to bifurcate Creditor’s Claim into a secured and unsecured portion under §506. (Dkt No. 64). Debtor alleged the Property has a value of \$730,000 pursuant to an appraisal dated April 19, 2024, completed by Realty Appraisal Service. Further, Debtor seeks an order “voiding” the alleged unsecured portion of the claim. The Appraisal attached to the Motion to Value was ordered by a non-filing party, the Debtor’s son, Frank Lopa. The Appraisal states the Property is “owner occupied.”

8. The Debtor did not file an Affidavit signed by the Appraiser.

9. To date, the Court has yet to approve an Application to Employ the Appraiser as a professional of the estate.

10. To date, the Debtor has failed to file a Report of Disinterested Party regarding the Appraiser and the connection to the Debtor and/or her family members who appears to reside at the Property.

## II. ARGUMENT

### A. CREDITOR OBJECTS TO THE DEBTOR'S MOTION TO VALUE

11. 11 U.S.C. § 506(a)(1) provides that an allowed claim of a creditor secured by a lien on property in which the estate has an interest...is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property.

12. In the Motion to Value, Debtor alleges the Property has a value of \$730,000.00 pursuant to an appraisal dated April 19, 2024, completed by Realty Appraisal Service. The Debtor seeks to bifurcate Creditor's Claim into a secured and unsecured portion under §506 and then void the unsecured claim. (Dkt No. 64).

13. First, Creditor asserts the Debtor's proposed valuation is premature as the Debtor has yet to file a Disclosure Statement or Chapter 11 Plan. The appropriate date for valuing the Property is at the time of confirmation. Creditor asserts the Property must be valued as of the confirmation date. 11 U.S.C. § 1129(b)(2)(A)(i)(II) provides that for a secured creditor to receive *fair and equitable* claim treatment it must received deferred cash payments of a value, ***as of the effective date of the plan***, of at least the value of the collateral. Since modification of claims occurs only through debtors' plan, it is at confirmation that the bankruptcy court considers whether proposed modifications comply with the requirements for confirmation." *In re Abdelgadir*, 455 B.R. 896 (9th Cir. BAP 2011).

14. Here, the Debtor has yet to file a Plan. As a result, the court should decline to value the collateral until a date closer to confirmation of the (yet to be filed) Plan. For instance, it could be months or years until the Debtor is prepared to confirm a Plan. In the meantime, the value of the collateral may increase significantly. To the extent the Court determines a current Property valuation is appropriate, Creditor reserves its right to seek to re-value the Property as of the confirmation date.

15. Second, Creditor believes the value of the Property is significantly higher than Debtor's proposed valuation. For instance, Debtor admitted the Property had a value of at least

\$1,106,100.00 on Bankruptcy Schedule D. (Dkt No. 1). Accordingly, Creditor requests an opportunity to obtain an updated interior appraisal report to verify Debtor's proposed valuation. In addition, Creditor requests Debtor's cooperation in allowing access to the Property to complete the appraisal report. **To date, the Debtor and/or her adult children residing in the Property, have yet to grant Creditor's appraiser access to the Property despite repeated requests for an inspection appointment.** As a result, Creditor reserves its right to supplement this Opposition with additional evidence of value, including an updated interior appraisal report and declaration from its appraiser. To the extent Debtor seeks to reduce Creditor's claim below the fair market value of the Property, the Motion to Value and subsequent claim treatment in a Plan would violate §506(a).

16. Third, the Debtor's valuation is unsupported by an Affidavit of the Appraiser or any other authenticated evidence.

17. Fourth, the Court has yet to approve an Application to Employ the Appraiser as a professional of the estate. It appears the Appraisal was ordered by, and paid for by Debtor's son and/or daughter, who reside in the Property and have been the parties funding the ongoing mortgage payments, , which presents a potential conflict.

18. Fifth, it is unclear if the Debtor currently resides at the Property. Debtor's Appraisal Report indicates the Property is occupied by the owner. In the event the Debtor occupies the Property as a principal residence, Debtor is prohibited from bifurcating the Claim to the alleged value of the Property or otherwise modifying the Claim in the Plan. 11 U.S.C. §1123(b)(5). While the anti-modification rule is an issue reserved for confirmation, Creditor asserts the Debtor's proposed valuation will require the Debtor to address the issue prior to confirming the Plan.

19. Sixth, it appears the purpose of the valuation is to bifurcate Creditor's Claim of \$1,370,203.52 into a secured claim of \$730,000.00 and an unsecured claim of \$640,203.52 in a proposed Chapter 11 Plan. Creditor would object to the proposed plan treatment due to the violation of the absolute priority rule. Pursuant to 11 U.S.C. §1129(b)(2)(B) a plan is fair and equitable with respect to a class of unsecured creditors if they are paid in full or no junior class

retains any interest in estate property except that in a case in which the debtor is an individual, the debtor may retain property included in the estate under section 1115, subject to the requirements of subsection (a)(14). This provision is commonly known as the absolute priority rule.

20. In this case, Creditor's security interest in the Property is senior to the Debtor's interest in the Property. The Debtor suggests the Claim will be bifurcated into a secured and unsecured portion in the Plan. It appears Debtor will attempt to retain an interest in the Property as a junior class member without paying unsecured claims in full. Unless the unsecured class will be paid in full, the Plan will violate the absolute priority rule. While the absolute priority rule is an issue reserved for confirmation, Creditor asserts the Debtor's proposed valuation will require the Debtor to address the issue prior to confirming the Plan.

21. Seventh, the Debtor requested an order "voiding" the alleged unsecured portion of Creditor's Claim. However, such relief may only be granted following entry of a confirmation order and subsequent discharge (or via an Adversary Proceeding), none of which is pending before this Court.

22. Finally, regardless of the Court's valuation of the Property, Creditor reserves its right to make an election under 11 U.S.C. §1111(b), entitling Creditor to a fully secured Claim in the Plan.

**WHEREFORE**, Creditor respectfully requests:

1. That the Motion to Value be denied;
2. That the Court order the Debtor to immediately grant Creditor access to the Property to complete an interior appraisal;
3. In the alternative, that the Court postpone any valuation of the Property until a date closer to confirmation of the Plan;
4. In the alternative, that the Court continue the hearing on the Motion to Value to allow Creditor to complete an interior appraisal report; and
5. For such other and further relief as this Court deems just and proper.

Dated: July 5, 2024

Respectfully submitted,

/s/ Jenelle Arnold  
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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK - BROOKLYN DIVISION

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In Re:

Case No. 1-23-42457-ess

Chapter 11

ROSEMARIE LOPA,

Debtor.

**CERTIFICATE OF SERVICE**

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The undersigned hereby certifies that I caused a copy of the Objection to Debtor's Motion to Reclassify Claim No. 14 and Avoid Lien Against Real Property to be served via electronic means and/or mailed by U.S. Mail on July 5, 2024 to the parties listed below:

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Frank Lopa  
283 Nugent Street  
Staten Island, NY 10306  
(via U.S. Mail)

Capital One  
Attn: Bankruptcy  
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Salt Lake City, UT 84130

Frank Lopa  
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Staten Island, NY 10306

Chase Card Services  
Attn: Bankruptcy  
P.O. 15298  
Wilmington, DE 19850

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Citicorp Cr Srvs/Centralized  
Bankruptcy  
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St Louis, MO 63179

Department of Justice  
Eastern District of NY (Brooklyn)  
Alexander Hamilton Custom House  
One Bowling Green  
Room 510  
New York, NY 10004-1408  
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Costco Citi Card  
Attn: Bankruptcy  
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Credit One Bank  
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Las Vegas, NV 89113

Genesis FS Card Services  
Attn: Bankruptcy  
Po Box 4477  
Beaverton, OR 97076

Kohls/Capital One  
Attn: Credit Administrator  
Po Box 3043  
Milwaukee, WI 53201

Macys/fdsb  
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Nationstar Mortgage  
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Synchrony Bank/TJX  
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Volkswagen Credit, Inc  
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Volvo Car Financial Services  
Atn: Bankruptcy  
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Respectfully submitted,

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